

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

FRED DEVER, et al.,

Case No. 3:-06-CV-392

Plaintiffs,

-vs-

Judge Thomas M. Rose

HON. GENE KELLEY, Sheriff, et al.,

Chief Magistrate Judge Michael R. Merz

Defendants.

**ENTRY AND ORDER OVERRULING DEFENDANT GLENN CLARK'S
OBJECTIONS (Doc. #24) TO THE CHIEF MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATIONS (Doc. #23) REGARDING
CLARK'S MOTION TO DISMISS AND ADOPTING THE CHIEF
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATIONS
OVERRULING CLARK'S MOTION TO DISMISS.**

This matter is before the Court pursuant to Defendant Glenn Clark's ("Clark's") objections to the Report and Recommendations (doc. #23) of Chief Magistrate Judge Michael R. Merz regarding Clark's Motion To Dismiss (doc. #17). The Plaintiffs have responded to Clark's Objections (doc. #25) and the Objections are, therefore, ripe for decision.

Plaintiffs allege that Clark violated their constitutional rights. In his Motion To Dismiss, Clark asserts that he is a purely private actor and therefore not liable for any deprivation of constitution rights. Chief Magistrate Judge Merz finds that Plaintiffs have sufficiently alleged in their Complaint that Clark was not a private actor and recommends overruling Clark's Motion To Dismiss.

As required by 28 U.S.C. §636(b) and Federal Rules of Civil Procedure Rule 72(b), the District Judge has made a de novo review of the record in this case. Upon said review, the Court

finds that Clark's objections (doc. #24) to Magistrate Judge Merz's Report and Recommendations (doc. #23) are not well-taken, and they are hereby OVERRULED.

Magistrate Judge Merz's Report and Recommendations (doc. #23) is ADOPTED in its entirety. Clark's Motion To Dismiss is OVERRULED. Finally, the Court notes that Chief Magistrate Merz identifies several specific issues which he has not decided and those issues are, therefore, not decided herein.

DONE and **ORDERED** in Dayton, Ohio, this Sixth day of August, 2007.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record